Supreme Court, U.S.
FILED
JAN 29 1996
CLERK

No. 95-945

In the
Supreme Court of the United States
OCTOBER TERM, 1995

LEONARD L. GUMPORT, TRUSTEE OF THE BANKRUPTCY ESTATE OF TRANSCON LINES,
Petitioner,

v.

STERLING PRESS, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

Richard H. Streeter
(Counsel of Record)
Mark J. Andrews
Stanley C. Fickle
Barnes & Thornburg
1401 Eye Street, N.W.
Suite 500
Washington, D.C. 20005
(202) 408-6933

Daniel J. Sweeney
John M. Cutler
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 393-5710

Mark A. Dickerson
Law Offices of
Mark A. Dickerson
1926 Contra Costa Boulevard
#150
Pleasant Hill, CA 94523-3034
(510) 933-4929

Attorneys for Respondent

January 1996

20 pp

QUESTIONS PRESENTED

1. Whether application of section 2 of the Negotiated Rates Act of 1993 violates sections 363(l) and 541(c)(1)(B) of the Bankruptcy Code?

2. Whether section 9 of the Negotiated Rates Act of 1993 prohibits application of section 2 of that same Act to undercharge claims of bankrupt motor carriers?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

STATEMENT 2

ARGUMENT 5

I. There Is No Conflict Among The Circuits ... 5

II. Section 2 of the NRA Does Not Conflict With The Antiforfeiture Provisions of the Bankruptcy Code 7

III. Section 9 of the NRA Does Not Prohibit Application Of Section 2 Of The Same Act To Undercharge Claims Of Bankrupt Motor Carriers 11

IV. Petitioner's Attempt To Invoke The Pension And Wage Claims Of Former Employees Of Bankrupt Motor Carriers Is Beside The Point 12

CONCLUSION 15

TABLE OF AUTHORITIES

Cases:

Hargrave v. United Wire Hanger Corp., __ F.3d ___, 1996 WL 5852 (3rd Cir. 1996) 6, 9

In re: Bulldog Trucking, Incorporated v. B & L, Incorporated, 66 F.3d 1390 (4th Cir. 1995) . 6, 9

In re Olympia Holding Corporation v. Power-Brake Supply, Inc., 68 F.3d 1304 (11th Cir. 1995) 6, 9

In the Matter of Lifschultz Fast Freight Corporation, 63 F.3d 621 (7th Cir. 1995) . . 6, 9, 10, 12

Jones Truck Lines v. Whittier Wood Products Company, 57 F.3d 642 (8th Cir. 1995) . 6, 8, 9

Maislin Industries v. Primary Steel, 497 U.S. 116 (1990) 2

Pittsburgh & Lake Erie R.R. Co. v. Railway Labor Executives' Ass'n, 491 U.S. 490 (1989) . 9

Statutes and regulations:

11 U.S.C. § 362(a)(3) 3

11 U.S.C. § 363(l) 3, 5

11 U.S.C. § 541(c)(1) 3, 5

28 U.S.C. § 1254(1) 1

49 U.S.C.A. § 10761 (West Supp. 1995) 2

49 U.S.C.A. § 10762 (West Supp. 1995) 2

49 U.S.C.A. § 10701(f)(1)(A)(West Supp. 1995), now codified at 49 U.S.C. § 13709(a)(1)(A) 3

49 U.S.C.A. § 10701(f)(2)-(4)(West Supp. 1995), now codified at 49 U.S.C. § 13709(b)-(d) 3

49 U.S.C.A. § 10701(f)(9)(West Supp. 1995), now codified at 49 U.S.C. § 13709(h)(1)(A) 3

49 U.S.C. § 13702, 109 Stat. 868 4

49 U.S.C. § 13711, 109 Stat. 877 4

ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) 2, 3, 4

Negotiated Rates Act of 1993, Pub. L. No. 103-180, 107 Stat. 2044, 49 U.S.C.A. § 10701(f) (West Supp. 1995) ..... *passim*

Miscellaneous:

H.R. Rep. No. 359, 103d Cong., 1st Sess. 9 (1993), *reprinted in* 1994 U.S. Code Cong. & Admin. News 2534, 2536 ..... 2, 4, 10

H.R. Rep. No. 422, 104th Cong., 1st Sess. 209 (1995) 3, 4

139 Cong. Rec. 9596-96001 (daily ed., Nov. 15, 1993) 12, 13, 14

In the
Supreme Court of the United States
OCTOBER TERM, 1995

No. 95-945

LEONARD L. GUMPORT, TRUSTEE OF THE BANKRUPTCY ESTATE OF TRANSCON LINES,
Petitioner,

v.

STERLING PRESS, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 58 F.3d 1432. The opinion of the district court (Pet. App. 24a-56a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 1995 (Pet. App. 1a). On September 14, 1995, the court of appeals denied rehearing and suggestion for rehearing en banc. The petition was filed on December 13, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

1. Petitioner, the Trustee of Transcon Lines ("Transcon"), a bankrupt motor carrier, seeks to prevent application of the Negotiated Rates Act of 1993 ("NRA") to undercharge claims he asserted against respondent Sterling Press, Inc. ("Sterling").[1] In *Maislin Industries v. Primary Steel*, 497 U.S. 116 (1990), while holding that the filed rate doctrine demanded strict adherence to tariff rates under former §§ 10761 and 10762 of the Interstate Commerce Act,[2] this Court observed that "it is the responsibility of Congress to modify or eliminate these sections" if they have become an anachronism in the wake of the Motor Carrier Act of 1980. *Maislin*, 497 U.S. at 136. In response to this Court's invitation and the epidemic of undercharge cases filed by petitioner and other nonoperating motor carriers, Congress enacted the NRA,[3] thereby providing relief to shippers faced with

---

[1] *Amici curiae* Lloyd T. Whitaker, the Trustee of Olympia Holding Corporation f/k/a P*I*E Nationwide, Inc. ("Whitaker") and the Central States, Southeast and Southwest Area Health and Welfare and Pension Funds ("Funds") have filed briefs in support of petitioner.

[2] Unless otherwise indicated, all citations to Title 49 are to sections as they existed prior to the recent enactment of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 ("ICCTA"). The ICCTA renumbered those sections of Title 49 which were reenacted.

[3] H.R. Rep. No. 359, 103d Cong., 1st Sess. 9 (1993), *reprinted in* 1994 U.S. Code Cong. & Admin. News 2534, 2536. The purpose of the NRA "is to provide a statutory

undercharge claims asserted by a carrier, or by a person representing such a carrier, which "is no longer transporting property." Section 2(a) of NRA.[4]

In addition to establishing statutory formulas for settling undercharge claims,[5] the NRA relieved small business concerns, such as Sterling, of any and all liability for undercharges above the rate originally billed and paid.[6] Furthermore, section 2(e) legislatively ameliorated the filed rate doctrine for motor carrier service provided before September 30, 1990, by making it an "unreasonable practice" for a nonoperating carrier to seek undercharges for that service. ICCTA now "expands and codifies the undercharge relief provided in section 2(e)" of NRA by

---

process for resolving disputes for claims involving negotiated transportation rates brought about by trustees for non-operating motor carriers for past transportation services" (*id.* at 7). These disputes arose when motor carriers, after negotiating individual rates for particular transportation services, failed "to properly file the negotiated rate with the ICC or when certain conditions trigger tariff provisions cancelling tariff discounts" (*id. at 8).* Petitioner filed in excess of 30,000 suits against former Transcon customers, even though no such claims were raised when Transcon was operating.

[4] *See* 49 U.S.C.A. § 10701(f)(1)(A)(West Supp. 1995), now codified at 49 U.S.C. § 13709(a)(1)(A).

[5] *See* 49 U.S.C.A. § 10701(f)(2)-(4)(West Supp. 1995), now codified at 49 U.S.C. § 13709(b)-(d))

[6] *See* 49 U.S.C.A. § 10701(f)(9)(West Supp. 1995), recodified at 49 U.S.C. § 13709(h)(1)(A).

"removing the September 30, 1990 cut-off date." H.R. Rep. No. 422, 104th Cong., 1st Sess. 209 (1995).[7]

2. Petitioner sued Sterling to collect $28,269.61 of alleged undercharges for transportation provided by Transcon prior to its bankruptcy filing. This amount is in addition to the charges which Transcon had originally billed Sterling and which Sterling had paid. In response, Sterling filed a Motion to Dismiss and/or for Summary Judgment and invoked the "small business" exemption of the NRA as a defense to the Trustee's undercharge claims.

3. Following withdrawal of reference to the district court, petitioner resisted dismissal, claiming that §§ 2(a) through (c) and 2(e) through (g) of NRA are rendered unenforceable by provisions in the Bankruptcy Code, namely 11 U.S.C. §§ 362(a)(3), 363(l) and 541(c)(1), because these sections of the NRA are assertedly "conditioned on the insolvency or financial condition of the debtor" (Pet. App. 47a). On March 22, 1994, the district court rendered its oral decision rejecting petitioner's arguments and finding that NRA "cannot be

---

[7] Contrary to the argument of *amicus* Whitaker that "Congress has declined to repeal the filed rate doctrine" (Br. 12), the expansion of the unlawful practice defense in the ICCTA (49 U.S.C. § 13711, 109 Stat. 877-878), coupled with the elimination of the tariff requirements for all motor carriers except those engaged in the noncontiguous domestic trade and household goods transportation (49 U.S.C. § 13702, 109 Stat. 868-869), has effectively obliterated the statutory basis for the filed rate doctrine. Hence, that doctrine is largely of historical, not current, importance.

reasonably construed or interpreted as a statute in which the benefits and remedies are . . . 'conditioned on the insolvency or financial condition of the debtor'" (Pet. App. 47a). Rather, the plain words of the NRA's remedial provisions apply to "carriers who have stopped the business of carrying" (*id.* at 48a).

The district court also rejected petitioner's alternate argument that section 9 of NRA prohibits application of section 2 of that Act to the claims asserted by the bankruptcy estate of a motor carrier. *Id.* at 87a. Petitioner appealed to the Ninth Circuit Court of Appeals.

4. The court of appeals held that the clear, unambiguous language of section 9 "prohibits any construction of the [NRA] which would have the effect of 'limiting' or 'affecting' the application of the Bankruptcy Code" (Pet. App. 13a). However, it affirmed on the grounds that section 2 of the NRA "is not conditioned on the insolvency or financial condition of the debtor, and therefore does not create a conflict with the Bankruptcy Code's antiforfeiture provisions" (Pet. App. 20a).

ARGUMENT

I. There Is No Conflict Among The Circuits.

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Petitioner erroneously asserts (Pet. 24-28) that the court of appeals' decision conflicts with decisions of other circuit courts. All courts of appeals which have considered the issues -- a total of six circuits -- have sustained the validity of the NRA and rejected the arguments raised by petitioner herein. *See*

Jones Truck Lines v. Whittier Wood Products Company, 57 F.3d 642 (8th Cir. 1995); *In the Matter of Lifschultz Fast Freight Corporation*, 63 F.3d 621 (7th Cir. 1995); *In re: Bulldog Trucking, Incorporated v. B & L, Incorporated*, 66 F.3d 1390 (4th Cir. 1995); *In re Olympia Holding Corporation v. Power-Brake Supply, Inc.*, 68 F.3d 1304 (11th Cir. 1995); *Hargrave v. United Wire Hanger Corp.*, __ F.3d ___, 1996 WL 5852 (3rd Cir. 1996).[8] Neither petitioner nor the *amici* have mentioned the reasoning expressed by the Fourth and Eleventh Circuits in rejecting arguments that are virtually identical to those advanced by petitioner and *amici* herein.

Because every court of appeals to address the issue has held that there is no conflict between the NRA and the Bankruptcy Code, petitioner is reduced to pointing to

---

[8] The uniformity of holdings with respect to the NRA is reflected in the Third Circuit's terse observation in *Hargrave*, __ F.3d ___, 1996 WL 5852 *1, that:

> Many courts have addressed these questions, and virtually all of them (including every Court of Appeals to address the issue) have found in favor of the defendant shipper. Because so many opinions have already been written on this abstruse subject, we elect not to consume more trees from the forest. Rather we strongly endorse (and adopt) the reasoning of *In re Lifschultz Fast Freight Corp.*, 63 F.3d 621 (7th Cir. 1995), the latest in the growing line of cases.

insignificant differences in the rationale expressed by the various circuits. Such minor differences in reasoning, however, do not create a conflict worthy of this Court's consideration.

II. Section 2 of the NRA Does Not Conflict With The Antiforfeiture Provisions of the Bankruptcy Code.

Petitioner (Pet. 18-28) and *amici* Funds (Br. 7-9) contend that application of section 2 of the NRA results in a forfeiture of assets contrary to the anti-forfeiture provisions of the Bankruptcy Code codified at 11 U.S.C. §§ 363(l) and 541(c)(1)(B). According to petitioner and *amici* Funds, there is no distinction between a motor carrier's "financial condition" as used in the Bankruptcy Code and its "non-operating" condition as used in the NRA. Therefore, the argument goes, because the NRA defenses, by definition, are based on the financial condition of the motor carrier, they conflict with the anti-forfeiture provisions which "protect each and every debtor in bankruptcy from the enforcement of any . . . non-bankruptcy statute that forfeits or modifies property of the debtor based on its bankruptcy, insolvency, or 'financial condition.'" (Pet. 19-20).

Relying on the plain meaning of the language used by Congress in section 2 of the NRA, which applies only to carriers "no longer transporting property," the court of appeals rejected petitioner's construction. As the court of appeals held, "section 2 is not *'conditioned on'* the insolvency or financial condition of the debtor" (Pet. App. 18a) (emphasis in original). Because the "term 'financial condition' represents a concept that is somewhat broader than operational status," (Pet. App. 19a), the clear

wording of the NRA relating to a carrier's operational status embodies a concept that is distinct from a "motor common carrier's solvency or financial condition" (Pet. App. 20a). This holding reflects the court's recognition (Pet. App. 17a) that it is possible both "for a carrier to stop transporting freight and yet remain solvent" *and* "for a carrier to seek bankruptcy protection and still continue to transport property under a plan of reorganization." In the latter situation, when a carrier enters bankruptcy but continues operating, the NRA defenses are not applicable. In view of these clear distinctions, section 2 "does not create a conflict with the Bankruptcy Code's antiforfeiture provisions" (*id.*).

The Ninth Circuit's holding is consistent with those of the other circuits that have addressed the same "financial condition" argument raised here by petitioner and *amici*. As the Eighth Circuit recognized in *Jones*, the NRA's distinction between operating and non-operating carriers is founded on the common sense proposition that:

> Carriers which are still operating, whether in bankruptcy or not, have an incentive to maintain good relations with customers and are less likely to file undercharge claims. Regardless of their financial condition, nonoperating carriers have no such incentive and seem more likely to pursue undercharge claims. . . . That many and perhaps most nonoperating carriers have also filed for bankruptcy undermines neither the logic of the line Congress drew nor the clarity with which it was drawn.

57 F.3d at 649; *accord Bulldog*, 66 F.3d at 1398; *Olympia*, 68 F.3d at 1308.[9]

Furthermore, the court of appeals' construction is consistent with the plain wording used by Congress, and "effectuate[s] congressional intent" (Pet. App. 20a) while avoiding "potential conflicts in statutory provisions" (*id.*). As such, the court's construction is consistent with this Court's observation that "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Pittsburgh & Lake Erie R.R. Co.*

---

[9] The Seventh Circuit in *Lifschultz* and the Third Circuit in *Hargrave* join the Eighth, Fourth, and Eleventh Circuits in holding that the NRA's "small business" exemption, 49 U.S.C.A. § 10701(f)(9), does not violate the Code's "anti-forfeiture" provisions for an additional reason: It is an "unconditional" exemption from liability that can be asserted against the undercharge claims of all motor carriers, not just those who are no longer operating. *Lifschultz*, 63 F.3d at 629-32; *Hargrave*, 1996 WL 5852, at 2; *Jones*, 57 F.3d at 647-49; *Bulldog*, 66 F.3d at 1396-97; *Olympia*, 68 F.3d at 1308. The court of appeals in this case noted (Pet. App. 6a) that the Eighth Circuit had held the small business exemption applicable regardless of operating status, but indicated (Pet. App. 7a) that this position was not "addressed extensively" by the parties here. The court of appeals found that it need not reach that issue if it determined, as it did, that "nonoperational status" is not "equivalent to conditioning [the application of section 2] on the insolvency or financial condition of the debtor." *Id.*

v. Railway Labor Executives' Ass'n, 491 U.S. 490, 510 (1989).[10]

Petitioner's claims, which are based upon a strained interpretation of the statutory language, would not only create an insurmountable conflict between the Bankruptcy Code and the NRA, but would also abrogate the very core of the NRA's purpose of "resolving disputes for claims involving negotiated transportation rates brought about by trustees for non-operating motor carriers for past transportation services" (H.R. Rep. 359 at 7).[11] Indeed, as *amici* Whitaker ultimately contends (Br. 9), the NRA would apply only to "the undercharge claims of those non-operating carriers that did not or do not file bankruptcy." Such arguments with regard to NRA section 2, which would nullify the core features of the statutory relief from undercharges, do not warrant review by this Court.

---

[10] In an attempt to create a conflict, Whitaker argues (Br. 8) that "the 'absurdity' and 'repeal-by-implication' arguments have no merit." This argument is a red herring as the court of appeals flatly rejected any suggestion that the NRA amended the Bankruptcy Code (Pet. 10a-11a).

[11] As reflected by the Conference Report, Congress intentionally used the words "non-operating motor carriers" in the NRA to include the "bankrupt carrier[s] that precipitated the situation by failing to file a negotiated rate as they had agreed to do." H.R. Rep. 359, *supra*, at 10.

III. Section 9 of the NRA Does Not Prohibit Application Of Section 2 Of The Same Act To Undercharge Claims Of Bankrupt Motor Carriers.

Section 9 of the NRA states, in part, that "[n]othing in this Act . . . shall be construed as limiting or otherwise affecting application of title 11, United States Code, relating to bankruptcy." Section 9 does not state that the NRA is inapplicable to bankrupt *carriers*, nor does it establish the existence of any conflict between the NRA and the Bankruptcy Code. Indeed, the contrary is implied. As the court of appeals explained: "Section 9 of the [NRA] merely provides that *if* a conflict exists between the [NRA] and the Bankruptcy Code, then the Code takes precedence." Pet. App. 13a (emphasis supplied; citation omitted).

Notwithstanding petitioner's contention (Pet. 27-28), there is no meaningful distinction between the circuits' interpretations of section 9. The petitioner can invoke section 9 to avoid application of the NRA to his undercharge claims *only* if he establishes that section 2 of the NRA conflicts with the Bankruptcy Code. As explained above, the court of appeals found no conflict, nor have any of the other circuits that have addressed that contention.

In the absence of such a conflict, nothing in section 9 or in the Bankruptcy Code insulates a nonoperating, bankrupt motor carrier from the strictures of the NRA or any other law of general applicability. If a bankrupt motor carrier ceases to operate, the mere fact of its

bankruptcy does not enable it to disregard the NRA limits on undercharge collections.[12]

IV. The Attempt To Invoke The Pension And Wage Claims Of Former Employees Of Bankrupt Motor Carriers Is Beside The Point.

Petitioner's argument (Pet. 20), which is reiterated by *amici*, that the "Ninth Circuit creates a contradictory statutory scheme that undermines federal labor, pension, and bankruptcy laws and defeats the statutory rights of employees and their health, welfare and pension funds," ignores the balance which Congress stuck between the interests of shippers in halting the undercharge crisis and the interests represented by petitioner and *amici*. As evident from petitioner's and *amici's* lengthy recitation of

---

[12] This Court should pay no heed to Whitaker's implicit request (Br. 5-8) that it monitor the interplay of congressional committees. While Whitaker accuses the Public Works Committee of "circumventing the Judiciary Committee through . . . deceptive legislation" (Br. 7-8), he ignores the fact that the last minute amendment to section 9, if given the gloss advocated by the petitioner and *amici*, would "effectively nullif[y] the Act." *Lifschultz*, 63 F.3d at 627. Given the clearly articulated purpose of solving "the undercharge crisis . . . caused by certain trustees of bankrupt trucking companies repudiating the trucking company's own rates for past transportation services" (139 Cong. Rec. 9596 (daily ed., November 15, 1993)(Comments of Mr. Shuster)), it is inconceivable that a majority of Congress would favor adoption of a last minute amendment which would negate the fundamental purpose of the Act.

legislative history (Pet. 5-10),[13] Congress was well aware that the statutory compromise which it enacted would indirectly impact the various funds to which petitioner and the *amici* refer. Nonetheless, despite the *amici's* testimony and arguments made by NRA opponents during the floor debates in the House of Representatives (139 Cong. Rec. 9597, 9598, 9599, 9600 9601 (Comments of Messrs. Lipinski, Filner and Blackwell)), Congress balanced that impact against the "chilling effect on thousands of small businesses who are unable to make investment decisions or expand their hiring" until the "freight undercharge crisis" is resolved. 139 Cong. Rec. 9600 (daily ed., Nov. 15, 1993) (Comments of Mr. Valentine).[14]

---

[13] Whitaker (Br. 3-4, 14-15) and Funds (Br. 6).

[14] *See also id.* (Comments of Mr. Pomeroy):

> [T]he Negotiated Rates Act of 1993, tries to make some sense out of bankruptcy proceedings which would seek to lay on small employers across this country liabilities for shipments they have long since concluded and forgotten about. The very real impact of bankruptcy estate actions attempting to reach in this foul fashion into the pockets of these small employers would be to bankrupt the small employers. That does not advance any social purpose for unfunded worker's pensions or anything else.

Unwilling to abide by the obvious compromise, petitioner (Pet. 9) and *amicus* Whitaker (Br. 13) imply that the "limiting or otherwise affecting" language of section 9 was added in response to Mr. Brooks' letter of November 10, 1993. In actuality, the language was added to the bill by Mr. Rahall on November 4, well before the exchange of correspondence between Messrs. Mineta and Brooks.[15] Given this chronology, the implication that this language was intended to appease Mr. Brooks has no factual basis.

Finally, petitioner's and *amici's* arguments are undermined by Mr. Lipinski's statements during floor discussions immediately before the vote in the House of Representatives. *See* 139 Cong. Rec. 9597, 9599 (daily ed., November 15, 1993). As those remarks demonstrate, the NRA's opponents understood that the "limiting or otherwise affecting" language of section 9 would not support the construction which petitioner and *amici* now advance in order to prolong the undercharge campaigns. Had the language in section 9 had the intended impact claimed by petitioner and *amicus* Whitaker, Mr. Lipinski's remarks would have been superfluous, and the proponents of the NRA would have been arguing against its enactment. Thus, petitioner's argument shows no error by the court of appeals and provides no justification for review of the instant case by this Court.

---

[15] *See* Appellant's Excerpts of Record, Vol. 3, p. 532, filed May 20, 1994 in Ninth Cir. No. 94-55425. This language was inserted by Mr. Rahall to avoid any confusion with another undercharge bill introduced by Mr. Lipinski, H.R. 2021, which proposed specific amendments to the Bankruptcy Code and the ERISA statute.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Richard H. Streeter
(Counsel of Record)
Mark J. Andrews
Stanley C. Fickle
Barnes & Thornburg
1401 Eye Street, N.W.,
Suite 500
Washington, D.C. 20005
(202) 408-6933

Daniel J. Sweeney
John M. Cutler
McCarthy, Sweeney &
Harkaway, P.C.
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 393-5710

Mark A. Dickerson
Law Offices of
Mark A. Dickerson
1926 Contra Costa Boulevard
#150
Pleasant Hill, CA 94523-3034
(510) 933-4929

Attorneys for Respondent

January 1996